

State of Vermont Agency of Human Services Department of Corrections	Youthful Offender Status		Page 1 of 8
Chapter Security and Supervision	INTERIM PROCEDURE	REVISED – Supersedes Interim Procedure dated June 5, 2009.	
Attachments, Forms & Companion Documents: 1. Arrest of Youthful Offender form 2. Protocol for DCF-DOC Collaboration on Youthful Offender Cases 3. Youthful Offender Flow Chart			
Local Procedure(s) Required? Yes, see Quality Assurance section Applicability: All staff (including volunteers and contractors) Security Level:"B" - Anyone may have access to this document.			
Approved: <div style="display: flex; justify-content: space-between;"> <div data-bbox="168 722 631 758"> <hr style="width: 250px; margin: 0;"/> Andrew A. Pallito, Commissioner </div> <div data-bbox="743 688 912 758"> <u>June 6, 2011</u> Date Signed </div> <div data-bbox="1170 688 1365 758"> <u>June 6, 2011</u> Date Effective </div> </div>			

PURPOSE

The purpose of this Interim Procedure is to outline the responsibilities of the Vermont Department of Corrections (DOC) in conjunction with the Department for Children and Families (DCF) in implementing the requirements of the Youthful Offender Statute, 33 V.S.A § 5204, § 5104(b), and § 5285

POLICY

The Department of Corrections (DOC) is committed to collaborating with the Department for Children and Families (DCF) in all cases in which a child is adjudicated as a *youthful offender*. This collaboration includes the sharing of information, participation in mutual case conferences, and, when appropriate, in housing of youth adjudicated over the age of 18 in a Department of Corrections facility or facilities.

AUTHORITY

33 V.S.A §§ 5204, 5104(b), 5285

REFERENCE

Act of the Vermont General Assembly No. 185 *An Act Relating to Juvenile Judicial Proceedings*, from the 2007-2008 legislative session. Department Policy #08 *Relationship of the Department with Outside Individuals or Groups*.

DEFINITIONS

Criminal Court: Criminal Division of the Vermont Superior Court.

Disposition Case Plan: A report filed by DCF that contains: 1) recommendation as to whether youthful offender status is appropriate for the youth, 2) a disposition case plan, including proposed services and proposed conditions of juvenile probation in the event youthful offender status is

approved, and 3) a description of the services that may be available for the youth when he or she reaches 18 years of age.

Family Court: Family Division of the Vermont Superior Court.

Juvenile Probation: The legal status created by order of the Family Court in proceedings involving a violation of law, whereby a delinquent child is subject to supervision by DCF.

Violation of Probation: Non-compliance with a condition of probation by an action or behavior or lack of action or behavior that fails to comply with and violates a condition of probation agreed to by the offender and the courts.

PROCEDURAL GUIDELINES

1. Determining Youthful Offender Status

- a. If a defendant is between the ages of 10 -18 at the time of the offense, the State's Attorney, the youth, the Criminal Court judge, or any party may file a motion for *youthful offender* status. If a motion to consider *youthful offender* status is granted by the Criminal Court, a conditional plea of guilty is entered by the youth, and an order deferring the sentence is issued. The youth's case is then transferred to Family Court.
- b. The Department for Children and Families (DCF) prepares a written disposition case plan report for the Family Court (which is due within 30 days after the case is transferred to the Family Court unless the court extends the period for good cause shown). The report from DCF includes:
 - i. A recommendation as to whether *youthful offender* status is appropriate for the youth;
 - ii. A disposition case plan, which will be used as the basis for both sentencing and disposition in the Family Court; this report delineates service needs and proposed conditions of juvenile probation, if appropriate;
 - iii. A description of the services that may be available to the youth when they reach 18 years of age.
- c. Following the submission of this report, the court shall consider whether by treating the youth as a youthful offender the interest of public safety will be maintained. If public safety will be protected, the court will then consider whether:
 - i. The youth is amenable to treatment or rehabilitation as a *youthful offender*;
 - ii. DCF can provide and make available sufficient services to meet the youth's treatment needs.

2. Approval of Youthful Offender Status

- a. If the court approves the motion for *youthful offender* status, the court approves the disposition case plan, and the youth is placed on juvenile probation. The court may transfer legal custody of the youth to a parent, relative, person with a significant relationship with the youth, or DCF, provided that any transfer of custody shall expire on the youth's 18th birthday.
- b. If the court approves the motion for *youthful offender* status, a DOC Probation Officer (PO) will be assigned to participate in case reviews with DCF.

3. Denial of Youthful Offender Status

- a. If the Family Court denies the motion for *youthful offender* status, the case will be returned to the Criminal Court and the youth will be permitted to withdraw the plea. Any information related to the *youthful offender* proceeding is inadmissible in any subsequent criminal proceeding in the Criminal Court involving the youth.

- b. If the youth is not awarded *youthful offender* status and is convicted in the Criminal Court, the case is the sole responsibility of DOC.
- c. If the youth is not awarded *youthful offender* status but the case is transferred to the Family Court and the youth is adjudicated delinquent in the Family Court, the case is the sole responsibility of DCF.

4. Delivering Services to Youthful Offenders

DCF is responsible for supervision and providing services until the youth reaches the age of 18. DCF is responsible for providing the youth with necessary services and supports to successfully complete conditions of the juvenile disposition.

5. Documentation by DOC Staff

- a. The DOC Probation Officer will keep a file of the juvenile case. The file will contain the probation order/certificate, disposition report, offender identification, and other relevant documentation, such as DCF case plans and treatment summaries. If the youthful offender's case is successfully completed as determined by the Family Court, then this information will be destroyed. When the youthful offender reaches the age of 18 and the case is transferred to DOC supervision, the information in the file will then be incorporated into an offender file.
- b. The DOC **will not** create an electronic case for a youthful offender unless youthful offender status has been revoked and supervision is assumed by DOC through a conviction in the Criminal Court. .

6. Modifying or Revoking Disposition

- a. If the youth has not complied with conditions of the juvenile probation certificate, DCF may file a Violation of Probation (VOP) or a motion to modify or revoke disposition at a hearing in the Family Court. A supervising Juvenile Probation Officer (DCF) or Adult Probation Officer (DOC) may detain a *youthful offender* who has attained the age of 18 in a correctional facility operated by the Vermont Department of Corrections for violating conditions of probation, using the *Arrest of Youthful Offender* form, *Attachment 1*. (See section 7 below.)
- b. At the hearing, if the court finds that the youth has violated the terms of their probation, the court may:
 - i. Maintain the youth's *youthful offender* status, and modify the conditions of juvenile probation;
 - ii. Revoke the youth's *youthful offender* status and return the case to the Criminal Court for sentencing as an adult;
 - iii. Maintain the youth's *youthful offender* status and transfer supervision of the youth to DOC.
- c. If the youth's status as a *youthful offender* is revoked, the case is returned to the Criminal Court which will have access to all relevant Family Court records.
- d. If an adult sentence is imposed, DOC assumes sole responsibility for the case, and Family Court jurisdiction ceases. DCF will then transfer the case to DOC. Upon case transfer, DCF will provide DOC with any information that may assist DOC in the performance of its responsibilities. Appropriate releases will be signed prior to the transfer of information.

7. Lodging of Youthful Offender in an Adult Correctional Facility Operated by the DOC

- a. The DCF Probation Officer or the DOC Probation Officer may arrest or authorize the arrest and lodge a youthful offender **only if the offender is 18 years of age or older**.
- b. The above arrest must be accompanied by the *Arrest of Youthful Offender* form.
- c. The DOC Correctional Facility will accept the lodging as long as it meets the above criteria in *a* and *b*.

- d. It is the responsibility of the arresting Probation Officer (DCF or DOC) to notify the Family Court of the arrest and to arrange for transportation.

8. Mandatory Court Review Prior to Age 18

- a. The Family Court will review the *youthful offender's* case before the youth reaches age 18.
- b. At the hearing, DCF will report its recommendations, either for successful completion or continued jurisdiction over the youth past age 18. DCF will provide justification as to why its recommendation is in the best interest of the youth and consistent with community safety.
- c. The report will specify:
 - i. Which Department should continue to provide supervision to the youth beyond age 18;
 - ii. A case plan jointly created by DOC and DCF;
 - iii. A plan for coordinating services and sharing information in order to ensure compliance with, and completion of, the conditions of the juvenile probation.
- d. DCF will recommend whether DCF or DOC should be responsible for the supervision of the youth. If DCF is recommending DOC should be responsible for supervising the *youthful offender* past age 18, DOC will report on the services which would be available to the youth in the event supervision is transferred to DOC.
- e. If the Family Court finds that it is in the best interests of the *youthful offender* and consistent with public safety to extend the court's jurisdiction beyond the youth's 18th birthday, it may make an order continuing the court's jurisdiction. This could be any time frame up to the age of 22 (33 V.S.A. §§ 5104(b) and 5286(d)). The order will specify whether the youth will be supervised by DCF or DOC.
- f. Prior to the review hearing, a party may file a motion to modify or revoke the disposition pursuant to the provisions of 33 V.S.A. § 5285. If such a motion is filed, it shall be consolidated with the Family Court's review of the case.
- g. If the Family Court finds that it is not in the *youthful offender's* best interests to extend the court's jurisdiction beyond the *youthful offender's* 18th birthday, it will discharge the *youthful offender* and dismiss the criminal case (33 V.S.A. § 5286).

9. Successful Completion or Continuance of Disposition

- a. If the *youthful offender* successfully completes the conditions of juvenile probation, any party may file a motion for a hearing in the Family Court to determine whether the *youthful offender* has been rehabilitated.
- b. In determining whether a youth has successfully completed the terms of juvenile probation, DCF and/or DOC will provide information to the court re:
 - i. The degree to which the youth fulfilled the terms of the case plan and the probation order;
 - ii. The youth's performance during treatment;
 - iii. Reports from treatment personnel;
 - iv. Any other relevant facts associated with the youth's behavior.
- c. If the court finds that the *youthful offender* has not successfully completed the terms of the disposition order and has not been sufficiently rehabilitated, it may deny the motion, and extend or amend the probation order as it deems necessary.

10. Case Closure

- a. The DCF case will be closed whenever:
 - i. The Family Court successfully discharges the *youthful offender*; or,
 - ii. The Family Court issues an order of dismissal and transfers the case to the Criminal Court; or,
 - iii. The Criminal Court orders dismissal.
- b. If the DOC is acting as the lead case manager for a youthful offender over the age of 18, DCF staff will assist the DOC staff at Family Court hearings.

- c. The DCF case will also be closed on the *youthful offender's* 22nd birthday if the court had previously extended its jurisdiction.

TRAINING

- a. Central Office for both DOC and DCF is responsible for providing a joint statewide training for all necessary staff of both departments.
- b. Each site manager will ensure that all necessary staff have read and understood this directive.

QUALITY ASSURANCE

- a. Each site manger is responsible for developing local procedures to ensure that the directive is correctly and consistently implemented.
- b. The Field Services Executive and the Director of Facility Operations are responsible for orientating the District Managers and Facility Superintendents around the implementation of this directive.
- c. District Managers and Superintendents will develop and implement quality assurance procedures to ensure compliance with this directive.

ATTACHMENT 1 – SAMPLE**ARREST OF YOUTHFUL OFFENDER**

By the authority vested in me by Title 33 Chapter 52, Section 5285 (a) and Section 301 (2) of the Vermont Statutes as annotated, which allows an arresting authority to lodge a DCF client who is over the age of 18 and was adjudicated as a Youthful Offender after January 1, 2009, in a correctional facility that is operated by the Vermont Department of Corrections. (Reference DOC Interim Procedure *Youthful Offender Status*.)

I hereby (have arrested) or (authorize any law enforcement officer to arrest) _____,

Probationer's Name

DOB _____, who is over the age of 18, for the following violations of his/her probation agreement:

Condition(s):

A copy of this statement will be delivered with the probationer by the arresting officer to the Supervising Officer of the Correctional Facility to which he/she is brought for detention. A copy will also be furnished to the arrested probationer.

Supervising Probation Officer

Date

You, the arrested probationer, are entitled to have legal counsel at the probation violation hearing.

STATE of VERMONT

_____ County, ss.

At _____, in said County, on the _____ day

of _____ A.D. 20_____, by virtue of this precept I apprehended and detained the body of the within named

Probationer's Name

and read the same in his/her hearing and furnished him/her a copy of the complaint, and committed him/her for safekeeping at the

SIGNED: _____ **TITLE:** _____

DATE: _____

- DISTRIBUTION:** (1) *Copy to Probationer*
(2) *Copy to be delivered with the Probationer by the arresting officer, to the supervising officer of the Correctional Facility to which he/she is brought for detention*
(3) *Copy for arresting officer*
(4) *Copy for Probation & Parole Officer's file*
(5) *Copy for Juvenile Probation Officer*

ATTACHMENT 2 – SAMPLE**PROTOCOL FOR DCF AND DOC COLLABORATION ON YOUTHFUL OFFENDER CASES**

DCF Tasks	DOC Tasks
DCF will immediately notify the local DOC field office when DCF is writing a dispositional case plan in which Youthful Offender (YO) status is NOT being recommended.	When contacted by DCF on a case in which DCF is NOT recommending Youthful Offender (YO) status, a representative from the local DOC office will participate with DCF in developing a joint dispositional case plan.
When the family court grants YO status, DCF will notify the DOC contact from their regional office about the new case and send a copy of the family court-approved dispositional case plan to DOC.	When notified by DCF of a new YO case, DOC will assign the case to a DOC probation officer who will arrange with the DCF probation officer to meet jointly with the youth within the first month of the case.
DCF will keep the DOC probation officer connected with the case by including them in any documentation including treatment team notes, etc.	The DOC probation officer assigned to the case will review any documentation they receive from DCF on the case.
DCF will notify the DOC probation officer prior to any court action on the case and especially any court action which may eventually lead to a recommendation that DOC assume the primary case management role.	The DOC probation officer will join the DCF probation officer in court whenever a court action is being considered which may eventually lead to a recommendation that DOC assume the primary case management role.
DCF will work collaboratively with the DOC probation officer to develop a joint dispositional case plan for the court proceeding that is within 3 months of the youth's 18 th birthday.	DOC will work collaboratively with the DCF probation officer to develop a joint dispositional case plan for the court proceeding that is within 3 months of the youth's 18 th birthday.
DCF and DOC will jointly agree on who will assume primary case management duties once the youth turns 18 years of age. If an agreement cannot be reached, DCF will seek guidance from the YO administration team.	DCF and DOC will jointly agree on who will assume primary case management duties once the youth turns 18 years of age. If an agreement cannot be reached, DCF will seek guidance jointly with DCF from the YO administration team.
DCF continues case management responsibilities when the youth turns 18 if the court order from the hearing prior to the 18 th birthday designates DCF as the primary case manager.	DOC assumes case management responsibilities when the youth turns 18 if the court order from the hearing prior to the 18 th birthday designates DOC as the primary case manager.
If the DCF probation officer feels it is appropriate to utilize the adult correctional system to house the youth, DCF will notify the DOC probation officer. The DCF probation officer will place the youth in a DOC facility in accordance with the MOU.	If a youth over 18 is placed in an adult facility, the DOC probation officer will work with DCF during the placement to support the placement goals.

ATTACHMENT 3 - SAMPLE

YOUTHFUL OFFENDER FLOW CHART -

June 2011

Title 33, Chapter 52, Subchapter 5

